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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,126	11/25/2003	Donald R. Gilbreath	C02-085A	9442

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THE GATES CORPORATION  
IP LAW DEPT. 10-A3  
1551 WEWATTA STREET  
DENVER, CO 80202

EXAMINER

DUNWOODY, AARON M

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/723,126

Applicant(s)

GILBREATH, DONALD R.

Examiner

Aaron M. Dunwoody

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5, drawn to a fitting, classified in class 285, subclass 356.
- II. Claim 6, drawn to a method for producing a hydraulic fitting, classified in class 29, subclass 890.014.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as a heated press-fit.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US patent 6318763, Huang.

In regards to claim 1, Huang discloses an improved hydraulic fitting having a stem (10) including a hose insert portion, and a collar support portion, having a mating connection portion, and a collar having, a torque communication portion, a female support portion, and an inner periphery extending through the ferrule support portion and the torque communication portion, the improvement comprising:

the collar support portion including knurling (100) and an axial stop ring (see Figure 4 below),

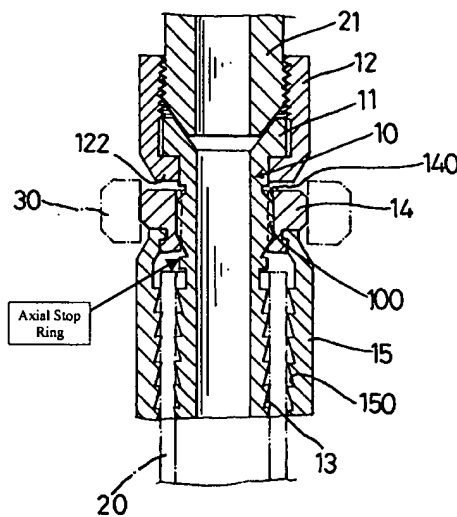


FIG. 4

the torque communication portion being staked such that the inner periphery extending through the torque communication portion communicates with the knurling in a relatively non-rotational manner, and

the ferrule support portion being staked such that the inner periphery extending through the ferrule support portion communicates with the axial stop ring in an axial movement limiting manner.

Note, a comparison of the recited process with the prior art process does NOT serve to resolve the issue concerning patentability of the product. In re Fressman, 489 F2d 742, 180 U.S.P.Q. 324 (CCPA 1974). Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. In re Klug, 333 F2d 905, 142 U.S.P.Q. 161 (CCPA 1964). In an *ex parte* case, product-by-process claims are not construed as being limited by the product formed by the specific process recited. In re Hirao et al., 535 F2d

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67, 190 U.S.P.Q. 15, see footnote 3 (CCPA 1976). Therefore, the limitation of staking is given little patentable weight.

In regards to claim 2, Huang discloses a hydraulic fitting comprising:

a stem having a hose insert portion, and a collar support portion,

a mating connection portion, the collar support portion including knurling and an axial stop ring,

a collar having, a torque communication portion, a ferrule support portion, and an inner periphery extending through the ferrule support portion and the torque communication portion,

the torque communication portion being staked such that the inner periphery extending through the torque communication portion communicates with the knurling in a relatively non-rotational manner, and

the ferrule support portion being staked such that the inner periphery extending through the ferrule support portion communicates with the axial stop ring in an axial movement limiting manner.

Note, a comparison of the recited process with the prior art process does NOT serve to resolve the issue concerning patentability of the product. In re Fressman, 489 F2d 742, 180 U.S.P.Q. 324 (CCPA 1974). Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. In re Klug, 333 F2d 905, 142 U.S.P.Q. 161 (CCPA 1964). In an *ex parte* case, product-by-process claims are not construed as being limited by the product formed by the specific process recited. In re Hirao et al., 535 F2d

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67, 190 U.S.P.Q. 15, see footnote 3 (CCPA 1976). Therefore, the limitation of staking is given little patentable weight.

In regards to claim 3, Huang discloses a ferrule (14) affixed upon the ferrule support portion.

In regards to claim 4, Huang discloses a hydraulic coupling and hose (20) comprising:

a hose end fitting including a stem having a hose insert portion, and a collar support portion,

the collar support portion including knurling and an axial stop ring,

a collar having, a torque communication portion, a female support portion, and an inner periphery extending through the ferrule support portion and the torque communication portion,

the torque communication portion being staked such that the inner periphery extending through the torque communication portion communicates with the knurling in a relatively non-rotational manner, the ferrule support portion being staked such that the inner periphery extending through the ferrule support portion communicates with the axial stop ring in an axial movement limiting manner, a mating connection portion, the hose fitted upon the hose end fitting,

an apparatus fitting (15), and

the apparatus fitting sealingly mated to the mating connection portion of the hose end fitting.

Note, a comparison of the recited process with the prior art process does NOT serve to resolve the issue concerning patentability of the product. In re Fressman, 489 F2d 742, 180 U.S.P.Q. 324 (CCPA 1974). Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. In re Klug, 333 F2d 905, 142 U.S.P.Q. 161 (CCPA 1964). In an ex parte case, product-by-process claims are not construed as being limited by the product formed by the specific process recited. In re Hirao et al., 535 F2d 67, 190 U.S.P.Q. 15, see footnote 3 (CCPA 1976). Therefore, the limitation of staking is given little patentable weight.

In regards to claim 5, Huang discloses a ferrule staked upon the ferrule support portion and the hose crimped under the female.

### ***Response to Arguments***

Applicant's arguments filed 9/16/2005 have been fully considered but they are not persuasive.

Applicant argues that Huang does not disclose a staking operation. The Examiner disagrees. A comparison of the recited process with the prior art process does NOT serve to resolve the issue concerning patentability of the product. In re Fressman, 489 F2d 742, 180 U.S.P.Q. 324 (CCPA 1974). Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. In re Klug, 333 F2d 905, 142 U.S.P.Q. 161 (CCPA 1964). In an ex parte case, product-by-process claims are not construed as being limited by the product formed by the specific process recited. In

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re Hirao et al., 535 F2d 67, 190 U.S.P.Q. 15, see footnote 3 (CCPA 1976). Therefore, the limitation of staking is given little patentable weight, and Huang meets the claim limitations.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron M. Dunwoody whose telephone number is 571-272-7080. The examiner can normally be reached on 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Aaron M Dunwoody  
Primary Examiner  
Art Unit 3679

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